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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,005	09/26/2003	Howard Marshall Monroe	108529.0007.001	7717

7590 07/05/2006

Michael D Stein  
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One Liberty Place  
Philadelphia, PA 19103

EXAMINER

ASSOUAD, PATRICK J

ART UNIT PAPER NUMBER

2857

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Interview Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/672,005	MONROE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Patrick J. Assouad	2857	

All participants (applicant, applicant's representative, PTO personnel):

(1) Patrick J. Assouad. (3) \_\_\_\_\_.

(2) Michael D. Stein. (4) \_\_\_\_\_.

Date of Interview: 28 June 2006.

Type: a) ☒ Telephonic b) ☐ Video Conference  
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☐ No.  
If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: \_\_\_\_\_.

Identification of prior art discussed: \_\_\_\_\_.

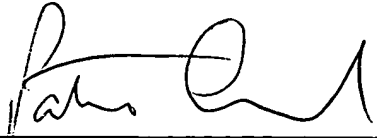
Agreement with respect to the claims f) ☒ was reached. g) ☐ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant's Attorney provided a proposed Amendment (attached). It is acceptable.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

  
 Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

#### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.



SEATTLE OFFICE  
999 Third Avenue, Suite 3600  
Seattle, WA 98104  
206-332-1380  
Fax: 206-624-7317

## FACSIMILE

DATE: June 27, 2006

JOB CODE: 095761

*Please deliver this and the following pages to:*

Name: **Examiner Patrick J. Assouad**  
Company/Firm: **United States Patent and Trademark Office  
Appln. No. 10/672,005**  
Telecopier No.: **571.273.2210**  
Client/Matter No.: **USAA-0084**  
Sender's Name: **Michael D. Stein**  
Pages to Follow: **6**

If transmission is not complete, please call our **Seattle Office** at (206) 332-1380.

### COVER MESSAGE:

Dear Examiner Assouad:

In connection with Application No. 10/672,005, attached is a proposed draft amendment to the Office Action dated March 31, 2006. I would like to briefly discuss the amendment with you prior to its formal filing on Friday, June 30, 2006. Would it be possible for you to telephone me at 206.332.1384 for such a discussion. I am available at any time for the remainder of this week. I look forward to hearing from you with regard to this matter.

Respectfully submitted,

Michael D. Stein

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERY OF THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

DOCKET NO.: USAA-0084(US-0014.01)  
Application No.: 10/672,005  
Office Action Dated: March 31, 2006

PATENT

**DRAFT – FOR DISCUSSION ONLY**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

**Howard Marshall Monroe and Thomas  
Alan Mee**

Confirmation No.: 7717

Application No.: 10/672,005

Group Art Unit: 2857

Filing Date: September 26, 2003

Examiner: Patrick J. Assouad

For: **APPARATUS AND METHOD FOR MANAGING THE PERFORMANCE  
OF AN ELECTRONIC DEVICE**

EXPRESS MAIL LABEL NO: EV XXXXXXXXXX US  
DATE OF DEPOSIT: \_\_\_\_\_

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REPLY PURSUANT TO 37 CFR § 1.111**

In response to the Official Action dated March 31, 2006, reconsideration is respectfully requested in view of the amendments and/or remarks as indicated below:

- ☐ Amendments to the Specification begin on page \_\_\_\_\_ of this paper.
- ☒ Amendments to the Claims are reflected in the listing of the claims which begins on page 2 of this paper.
- ☐ Amendments to the Drawings begin on page \_\_\_\_\_ of this paper and include an attached replacement sheet.
- ☒ Remarks begin on page 4 of this paper.

DOCKET NO.: USAA-0084(US-0014.01)  
Application No.: 10/672,005  
Office Action Dated: March 31, 2006

PATENT

## DRAFT – FOR DISCUSSION ONLY

This listing of claims will replace all prior versions, and listings, of claims in the application.

### Listing of Claims:

1. (Currently Amended) A method ~~of for use in managing one or more~~ electronic devices, including server computers, comprising the steps of:
  - collecting ~~performance and analyzing~~ historic resource utilization data relating to a plurality of servers, said resource utilization data representing the load placed on a set of finite resources over a predefined period of time said electronic device;
  - storing said ~~performance~~ resource utilization data on a storage device;
  - processing ~~analyzing~~ said ~~performance~~ resource utilization data for the purpose of and generating a plurality of forecasts including at least one resource utilization forecast for each server; ~~designed to predict future performance of said electronic device; and,~~
  - assigning a threshold value for use in identifying servers whose forecasted resource utilization exceeds said threshold value within said predefined period of time;
  - identifying the earliest forecasted date said threshold is exceeded for each said server;
  - sorting said forecasts by said dates, identifying those that are in the greatest need of prompt attention to prevent a failure or performance degradation; and
  - selecting a single forecast from said plurality;
  - performing an act to prevent a failure or performance degradation of said servers, said act comprising at least one of: (a) performing further analysis with respect to said servers, and (b) adjusting one of the workload and the capability of said servers.
2. Cancelled.
3. (Original) The method of claim 1, further comprising the additional step of:
  - generating a graphical display of one or more of said forecasts.
4. Cancelled.

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5. (Original) The method of claim 1, wherein said plurality of forecasts are generated via statistical analysis of said performance data.
6. (Currently Amended) The method of claim [2] 1, further comprising the additional steps of:  
modeling performance data provided by said selected forecast; and  
adjusting said threshold value based upon the results of said modeling.
7. (Original) The method of claim 6, further comprising the additional step of:  
subjecting said electronic device to additional analysis utilizing said adjusted threshold.
8. (Original) The method of claim 1, wherein said selected forecast comprises the forecast representing an acceptable level of performance degradation associated with said electronic device.
9. (Original) The method of claim 1, wherein said selected forecast comprises the most conservative forecast of said plurality of forecasts.
10. Cancelled.
11. (Original) The method of claim 1, further comprising the additional step of:  
validating said selected forecast.
12. (Currently Amended) The method of claim [4] 1, further comprising the additional steps of:  
determining a device type associated with said electronic device being analyzed; and  
adjusting the statistical analysis being applied to said electronic device based upon said device type.
- 13 – 28. Cancelled.

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### REMARKS

Claims 1 – 12 are pending in the application. Claims 2, 4, 10 and 13 – 28 have been hereby cancelled without prejudice, mainly to further prosecution with respect to claims 1 – 12, and claim 1 has been amended to clarify the claimed subject matter.

Original claims 1-28 were rejected under 35 USC § 102 as being anticipated by Helsper et al. (U.S. Patent No. 6,876,988). Examiner Assouad is respectfully urged to reconsider the application and to withdraw the rejection in view of the above amendment and the following remarks.

Applicants' undersigned attorney would like to thank Examiner Assouad for participating in a telephonic interview of May 26, 2006. Although no agreement was reached at that time, the examiner's comments were helpful in explaining the rationale for the rejection and what applicants might do to clarify the differences between applicants' invention and the prior art.

Claim 1 has been amended to clarify that the claimed process provides a way to triage a potentially large group of computers, or servers, to identify those servers needing priority attention. (These amendments have been made without prejudice to the possible refiling of the original claims or new claims in a continuing application.) More specifically, claim 1 recites the steps of:

collecting and analyzing historic resource utilization data . . . said resource utilization data representing the load placed on a set of finite resources over a predefined period of time;

\* \* \*

processing said resource utilization data and generating a plurality of forecasts . . .;



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## DRAFT – FOR DISCUSSION ONLY

assigning a threshold value for use in identifying servers whose forecasted resource utilization exceeds said threshold value within said predefined period of time;

identifying the earliest forecasted date said threshold is exceeded for each said server;

sorting said forecasts by said dates, identifying those that are in the greatest need of prompt attention to prevent a failure or performance degradation; and

performing an act to prevent a failure or performance degradation of said servers, said act comprising at least one of: (a) performing further analysis with respect to said servers, and (b) adjusting one of the workload and the capability of said servers.

In the first step, the term “analyzing” indicates that the process can include cleanup, error correction of historic data, and the mathematical derivation of other variables from the measured data. Moreover, the term “capacity utilization” reflects that the process is applicable to resource measurements such as processor percent busy, memory usage, disk read/write rates, etc. It should also be noted that the claimed process can correctly conclude that there are no servers requiring immediate attention. This conclusion is not a failure of the process, but rather indicates that the system is working well and that it has concluded that no further action is necessary because all servers have adequate resources to handle all forecasted workloads. The “earliest date” and “sorting forecasts” aspects of claim 1 were added to reflect that a benefit of the claimed process is the “triage” aspect, i.e., to identify those servers which would most benefit from prompt attention. The recitation, “or performance degradation” was inserted to indicate that servers seldom completely “fail” when they are overloaded, but their performance suffers.

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The aforementioned aspects of applicants' invention are neither disclosed nor suggested by the prior art of record. Should the examiner feel inclined to maintain the rejection, he is respectfully invited to call applicants' attorney at 206 332-1384 to discuss how the application might be further amended to place it in allowable condition.

Respectfully submitted,

Date: \_\_\_\_\_

\_\_\_\_\_  
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